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IN THE

Supreme Court of the United States

October Term, 1955

NO. 45

COMMONWEALTH OF PENNSYLVANIA,
Ex Rel. STEPHEN J. HERMAN,
Petitioner

vs.

DR. JOHN W. CLAUDY, Warden

On Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania, Western District.

BRIEF OF DISTRICT ATTORNEY OF WASHINGTON COUNTY, PENNSYLVANIA

WRAY G. ZELT,
District Attorney,
Washington County,
Pennsylvania,
HAROLD V. FERGUS,
First Ass't. District Attorney,
JOHN F. RONEY,
Assistant District Attorney,
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Washington, Penna.

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QUESTIONS PRESENTED FOR REVIEW

(1) Was it proper for the lower court to dismiss the Writ of habeas corpus without a hearing and was the Appellate Court justified in sustaining the lower court's decision?

(2) Was it a violation of due process of law of the Fourteenth Amendment when the sentencing judge failed to advise the defendant that he had a right to have the court appoint counsel, and was the judge required to appoint counsel for him?

(3) Is the petitioner guilty of laches by filing his petition for writ of habeas corpus some eight and one-half years after his sentence?

STATEMENT OF THE CASE

The District Attorney does not agree with some of the statements made concerning the facts of this case.

There is nothing in the record to show that the petitioner was assaulted by the police officers. This allegation made in the petition was denied by this office. Likewise, neither was the safety of the petitioner or his wife and children threatened by anyone. This was also denied by this office. The charge that the police officer grabbed the petitioner during the questioning was also denied by this office.

The statement that no relatives or friends appeared to give him advice was also denied by this office.

The charge that the petitioner on October 26, 1945 when brought before the court was directed by the Assistant District Attorney to sign pleas to eight indictments with the statement by the Assistant District Attorney that the petitioner was to "sign your name and forget it" was denied by this office. There is nothing in the record of the sentencing judge that this occurred.

The statement that the petitioner was unfamiliar with courtroom procedure, did not know he had a right to have counsel appointed for him, that no one informed him that by pleading he could be sentenced for a period of 315 years was denied by this office.

ARGUMENT

I. The confession obtained by the police officers from the defendant was not obtained by any threats to the defendant or to members of his family and neither was there any physical abuse committed by the police officers upon the defendant, the confession having been obtained properly, and also the defendant having an opportunity to inform the sentencing judge of these facts, failed to do so; therefore, it is proper to assume that these statements are false and without merit, and, therefore, the confession should be sustained.

There is no definite rule of law in Pennsylvania as to how long a defendant may be detained for questioning or investigation. If the petitioner was detained for 72 hours in the local jail it is the contention of the District Attorney that the detention was not for an unreasonable length of time.

The Pennsylvania courts have ruled on this question several times.

In the case of *Commonwealth of Pennsylvania vs. Shupp*, 365 Pa. 439, the defendant was not given a preliminary hearing until fifteen days after his arrest. The Supreme Court of Pennsylvania said:

> "The defendant was lawfully in prison charged with an unbailable crime. There is no

prescribed time within which a preliminary hearing must be held: Commonwealth vs. Agoston, 364 Pa. 464, certiorari denied U. S. Sup. Court, Oct. 9, 1950; Lyons v. Oklahoma, 322 U. S. 596; and in any event the delay, if it may be so characterized, in holding this hearing was, under the facts and circumstances in this case immaterial."

In the case of *Com. ex rel. Lockoski vs. Claudy,* 172 Pa. Superior Court 330 (a case from Washington County), the defendant was detained for seven days in the jail. On a writ of Habeas Corpus the Appellate Court sustained the lower court's dismissal of the writ by stating as follows:

"When one is lawfully in prison after his arrest there is no prescribed time within which a preliminary hearing must be held."

In the case of *Commonwealth of Pennsylvania vs. Shupp,* 365 Pennsylvania 439, 75 Atl. 2nd 587, involving a murder case, the prisoner was held in jail for 15 days before a preliminary hearing. The Court held:

"This was not an unreasonable length of time and therefore not a denial of due process of law."

In the case of *Commonwealth of Pennsylvania vs. Agoston,* 364 Pa. 464, where the prisoner was held for 4 days in jail before a hearing was held, the Court held this was not an unreasonable length of time to detain the petitioner.

After an examination of the cases from Pennsylvania it is the contention of the District Attorney that

the petitioner's constitutional rights were not violated by being confined in jail for 72 hours.

The mere fact that the petition alleges that the petitioner was illegally detained, that he was questioned at length and that threats were made to the petitioner as well as members of his family does not mean that the lower courts should ipso facto grant a hearing. All of the above allegations were denied by the answer of the District Attorney.

If the above allegations were true, the petitioner should have advised the Court or the District Attorney of the mistreatment received from the police officers. The petitioner was questioned on September 8, 1945 and one month and eighteen days after was called for sentence, namely on October 26, 1945. As the sentencing Judge states in his opinion,

> "While in open court where he entered his pleas he does not claim that he was influenced by any threats or undue influence or that he had been subjected to such during the one month and eighteen days intervening between his commitment and the time he appeared in court."

It is almost eight and one-half years later that the above charges are made by the petitioner.

As the trial Judge stated:

> "The defendant now claims that he was not guilty of any but one of the charges charged. He seeks now, almost eight years after entering his pleas of guilty and being sentenced to show his

innocence and contradict all of the records regarding the crimes in which he admitted he was involved. This is so unreasonable it requires no comment."

In the case at bar the Superior Court stated as follows:

"Since the lower court dismissed the petition without a hearing, the facts alleged in the petition, if properly and sufficiently averred and unless contradicted by the record itself must be accepted as true. The conclusions contained in it need not be."

Counsel for petitioner argues that since facts are alleged in the petition, a hearing must be held. Since our answer contradicted the allegations in the petition, the lower court was not required to grant a hearing. This contention was sustained by the Superior Court.

II. The failure of the sentencing judge to advise the defendant of his right to have the court appoint counsel for him in a case of this nature was not a violation of the due process clause of the Fourteenth Amendment.

A review of some of the cases in our appellate courts hold as follows:

In the case of *Commonwealth of Pennsylvania ex rel. Popovich vs. Claudy*, 170 Pa. Superior Court 482, the Court states as follows:

Relator was 17 years and 8 months old. Relator relies solely on his youth and alleged inexperience to establish a denial of due process in the absence of counsel at the time he pleaded guilty to charges of burglary and attempted burglary. He attempted to create an issue of federal due process by adopting in his petition some of the language appearing in the *Uveges v. Pa.* case:

> "Relator makes the contention frequently made by those seeking discharge on writ of habeas corpus possibly resulting from oversimplification of the Uveges case—that lack of counsel, if associated with one or more of the facts above mentioned, constitutes per se denial of due process of law.
>
> "To invalidate a plea of guilty in non-capital cases by reason of denial of due process arising from failure to provide a prisoner with counsel by the courts of this commonwealth, the prisoner must establish that for want of benefit of counsel an ingredient of unfairness actively operated in the process that resulted in his confinement citing many U. S. cases.
>
> "Again in Gallegos v. Nebrosha, 342 U. S. 55, Justice Reed speaking for the Court said, 'The Federal constitution does not command a state court to furnish defendants counsel as a matter of course as is required by the Sixth Amendment in Federal prosecutions. Lack of counsel at state non-capital trials denies federal constitutional protec-

tion only when the absence results in a denial to accused of the essentials of justice."

In the case at bar, the Superior Court held as follows:

"A careful reading of the record will indicate that there was no unfairness on the part of the Court or the District Attorney."

The Court further states that:

"The law to be applied in this case was set forth by this court in Com. ex rel. Reggie v. Burke, 170 Pa. Superior Ct. 647, 649, 90 A. 2d 385 (1952), as follows:

"The failure to provide counsel when none is requested or to advise a defendant that counsel will be assigned him upon request does not constitute, ipso facto, a denial of due process or other violation of a defendant's constitutional rights in noncapital cases.

"Both federal and state courts have said that, to invalidate a plea of guilty in noncapital cases by reason of denial of due process arising from failure to provide a prisoner with counsel by the courts of this Commonwealth, the prisoner must establish that for want of benefit of counsel an ingredient of unfairness actively operated in the process that resulted in his confinement. (Cases cited) In the absence of such ingredient of unfairness, the question of waiver of the right to counsel, understandingly made, does not require consideration."

See also *Com. ex rel Popovich v. Claudy,* 170 Pa. Superior Ct. 482, 87 A. 2d 489 (1952); *Com. ex rel. Johnson v. Burke,* 174 Pa. Superior Ct. 119, 100 A. 2d 125 (1953).

Whether there is "an ingredient of unfairness" is a determination to be made on the basis of the facts of the individual case; *Uveges v. Pennsylvania,* 335 U. S. 437, 69 S. Ct. 184, 93 L. Ed. 127 (1948).

In the recent case of *Com. ex rel. Swieczkowski v. Burke,* 173 Pa. Superior Ct. 363, 366, 98 A. 2d 229 (1953) this Court said:

> "Youth, lack of education, inexperience with the intricacies of criminal procedure, improper conduct on the part of the court or prosecuting officials and the complicated nature of the offense charged may, in some combination, constitute the 'ingredient of unfairness' which renders the absence of counsel at sentencing a denial of due process. Uveges v. Pennsylvania, 335 U. S. 437, 441, 69 S. Ct. 184, 93 L. Ed. 127."

The Court asked him where he had been working since he was paroled in the former case and, after the Court referred to his running away from his work while he was on parole, asked him, "Will you explain to me why the Court should extend any leniency to you?" The court asked him whether he had committed numerous burglaries and forgeries and various felonies and he replied, "Yes, sir." The Court inquired for the day of commitment, and sentenced with care. The Court's discussion of the case with the defendant is recorded over three pages of the printed record. It

shows that the defendant was not only given opportunity but was encouraged to say anything to the Court which he felt would be helpful to his cause. At no time did the defendant suggest that he desired counsel.

In the case of *Uveges v. Pennsylvania*, argued November 15 and 16, 1948, decided December 13, 1948, the majority of the Judges of this Honorable Court held as follows:

> Some members of the Court think that where serious offenses are charged, failure of a court to offer counsel in state criminal trials deprives an accused of rights under the Fourteenth Amendment. They are convinced that the services of counsel to protect the accused are guaranteed by the Constitution in every such instance. See Bute v. Illinois, 333 US 640, dissent, 677-679, 92 L ed 986, 1006, 1007, 68 S. Ct. 763. Only when the accused refuses counsel with an understanding of his rights can the court dispense with counsel. Others of us think that when a crime subject to capital punishment is not involved, each case depends on its own facts. See Betts v. Brady, 316 US 455, 462, 86 L ed 1595, 1601, 62 S. Ct. 1252. Where the gravity of the crime and other factors—such as the age and education of the defendant, the conduct of the court or the prosecuting officials, and the complicated nature of the offense charged and the possible defenses thereto—render criminal proceedings without counsel so apt to result in injustice as to be fundamentally unfair, the latter group hold that the accused must have legal as-

sistance under the Amendment whether he pleads guilty or elects to stand trial, whether he requests counsel or not. Only a waiver of counsel, understandingly made, justifies trial without counsel. The philosophy behind both of these views is that the due process clause of the Fourteenth Amendment or the Fifth Amendment requires counsel for all persons charged with serious crimes, when necessary for their adequate defense, in order that such persons may be advised how to conduct their trials. The application of the rule varies as indicated in the preceding paragraph. Under either view of the requirements of due process, the facts in this case required the presence of counsel at petitioner's trial. He should not have been permitted to plead guilty without an offer of the advice of counsel in his situation. If the circumstances alleged in his petition are true, the accused was entitled to an adviser to help him handle his problems. Petitioner was young and inexperienced in the intricacies of criminal procedure when he pleaded guilty to crimes which carried a maximum sentence of eighty years. There is an undenied allegation that he was never advised of his right to counsel. The record shows no attempt on the part of the court to make him understand the consequences of his plea.

The dissenting opinion delivered by Justice Frankfurter (four justices) held that:

1. The only matter before us is disallowance of the appeal to the Pennsylvania State Supreme Court.

At best, however, intervention by this court in the criminal process of state is delicate business. It should not be indulged in unless no reasonable doubt is left that a state denies or has refused to exercise, means of correcting a claimed infraction of the U. S. constitution.

Intervention by this Court in the administration of the criminal justice of a state has all the disadvantages of interference from without.

In the case of *Bute v. Illinois*, argued February 12, 1948, decided April 19, 1948, this Honorable Court held as follows:

> The issue here is whether or not each state sentence shall be held to have been imposed in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States because each common law record shows that the petitioner appeared "in his own proper person" and does not show that the Court inquired as to the petitioner's desire to be represented by counsel, or his ability to procure counsel, or his desire to have counsel assigned to him to assist him in his defense, or that such counsel was offered or assigned to him. We hold that such a silence in the respective records does not suffice to invalidate the sentences. We hold further that, in the absence of any showing beyond that in these records, the due process clause of the Fourteenth Amendment did not require the Illinois court to make the inquiries or the offer or assignment of

counsel now claimed to have been the right of the petitioner.

The cases turn upon the meaning of "due process of law" under the Fourteenth Amendment in relation to the assistance of counsel for the defense of the accused in state criminal trials such as these. In Powell v. Alabama, 287 US 45, 77 L ed 158, 53 S. Ct. 55, 84 ALR 527, this Court granted relief in a group of capital cases which demonstrated the essential need for applying the full force of the Fourteenth Amendment to the invalidation of purportedly valid judgments rendered in a state court under the circumstances there shown. Those and other less extreme cases have well illustrated the kind of service to the cause of justice which can be rendered by this Court in thus giving effect to the Fourteenth Amendment.

"The due process of law clause in the Fourteenth Amendment does not take up the statutes of the several States and make them the test of what it requires; nor does it enable this Court to revise the decisions of the state courts on questions of state law.

"This court has never attempted to define with precision the words 'due process of law,' nor is it necessary to do so in this case. It is sufficient to say that there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may

disregard, as that no man shall be condemned in his person or property without due notice and an opportunity of being heard in his defence."

Holden v. Hardy, 169 U. S. 366, 389, 390, 42 L. Ed. 780, 790, 18 S. Ct. 383.

The present case, on the other hand, illustrates equally well the kind of judgments by a state court that should not be invalidated as lacking in the due process of law required by the Fourteenth Amendment. This is so, although the procedure followed, in 1938, by the state court in the instant cases, as to counsel for the accused might not have satisfied the practice then required of a federal court in the case of comparable federal crimes. The Fourteenth Amendment, however, does not say that no state shall deprive any person of liberty without following the federal process of law as prescribed for the federal courts in comparable federal cases. It says merely, "nor shall any State deprive any person of life, liberty, or property, without due process of law."

III. The records in the office of the Clerk of Courts of Washington County, Pennsylvania concerning the hearing before the local alderman discloses that the petitioner was present at a hearing before the local alderman, did testify and admitted the crimes charged against him and entered an oral plea of guilty to the various charges entered against him and the record of the sentencing judge discloses that the Assistant District Attorney explained in detail to the court the nature of the charges and further discloses that the defendant was given an opportunity by the Assistant District Attorney as well as by the sentencing judge as to whether or not this petitioner had anything to state to the court about the cases. Therefore, there being no violation of the due process clause the conviction should be sustained.

The records in the office of the Clerk of Courts do not disclose that the petitioner was refused information concerning the charges, on the contrary the transcripts of the alderman disclose that the charges were read to the petitioner who after hearing the charges entered his oral pleas of guilty.

An examination of the record taken before the sentencing judge states that the indictments were read to the trial judge in the presence of the petitioner and at that time no request was made by the petitioner as to any information he desired concerning the charges.

As the Superior Court stated this petitioner had two years prior to the present charges been involved

with the crimes of burglary, larceny and forging in the Washington County jail for a period of six to twelve months. Having served a sentence the allegation by the petitioner that he had no previous court experience is without merit.

It is submitted that the petitioner cannot now contradict a record which has been on file in the Court House for over eight years by the writ of habeas corpus.

As was ably stated by the Superior Court, "A record was made of the hearing, the assistant District Attorney advised the Court that the defendant had entered a plea of guilty to the charges."

A careful reading of the record will indicate that there was no unfairness on the part of the Court or the District Attorney.

The Commonwealth contends that a judgment of conviction by a court carried with it a presumption of regularity. It further contends that the longer the judgment of conviction stands, the stronger the presumption of regularity becomes. In the case of *Commonwealth ex rel. Howard, Appellant v. Claudy,* 175 Pa. Superior Court, page 1, the Court states as follows:

> "Equally important in habeas corpus proceedings is the presumption of regularity which a judgment of conviction carries with it: Commonwealth ex rel. Kaylor v. Ashe, 167 Pa. Superior Ct. 263, 267, 74 A. 2d 769. Our courts have never said that this presumption is conclusive, but when

one undertakes to overcome it, his evidence should be clear and convincing. Furthermore, the longer the judgment stands, the stronger the presumption becomes."

IV. The petitioner is guilty of laches by filing his petition for a writ of habeas corpus about eight and one half years after his sentence.

The above question for argument was presented in the brief of the District Attorney to the Pennsylvania Superior Court but the issue was not decided by the court.

In the case of *Commonwealth ex rel. Quinn v. Smith, Warden*, 144 Pa. Superior Court 160, where a petition for Writ of Habeas Corpus was filed some fifteen years after sentence and over ten and one-half years after his release on parole, the Court held as follows:

> "We are of the opinion that, by reason of his subsequent criminal conduct, it is now too late to enter upon a full and proper investigation into the matters alleged in his petition and arrive at a just determination of their truth or falsity."

In the case of *Palmer v. Ashe* decided by this Court on November 5, 1951, and reported in 342 U. S. 134, the petitioner presented his petition for Writ of Habeas Corpus some eighteen years after his plea of guilty.

Justice Black speaking for this Court held that the prisoner was entitled to a judicial hearing.

The minority opinion (four justices) held as follows:

> "I think it an allowable judgment for the Pennsylvania courts to conclude that petitioner's allegations, made eighteen years after trial were improbable in the light of the matter of record that probable cause did not exist for his discharge, and that the necessity of a hearing was not indicated. The courts had a right to assume in absence of allegations or record to the contrary, that petitioner was a mentally competent young man of twenty-one years; and that his contention made eighteen years later, that he had pleaded guilty to crimes other than he thought he was pleading to was a bit hard to believe, especially in the absence of an allegation that he did not commit the offense charged in the indictments. To me it appears plain that the record on the whole is against the petitioner. Under the practice of Pennsylvania petitioner is entitled to the Writ of Habeas Corpus only when the court is satisfied there is probable cause for it to issue. On the record it was permissible for the courts of Pennsylvania to conclude that there was no probable cause shown why the writ should issue and that a hearing was not necessary."

In *Commonwealth ex rel. Uhler v. Burke*, 172 Pa. Superior Court 108, decided in 1952 the Court held that the petitioner, who some eighteen years from the

time of his commitment presented his petition for Writ of Habeas Corpus, had failed to establish any denial of due process or other infringement of his constitutional rights.

In conclusion it is submitted that the petitioner has failed to state a cause of action and therefore the judgment below should be sustained.

Respectfully submitted,

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